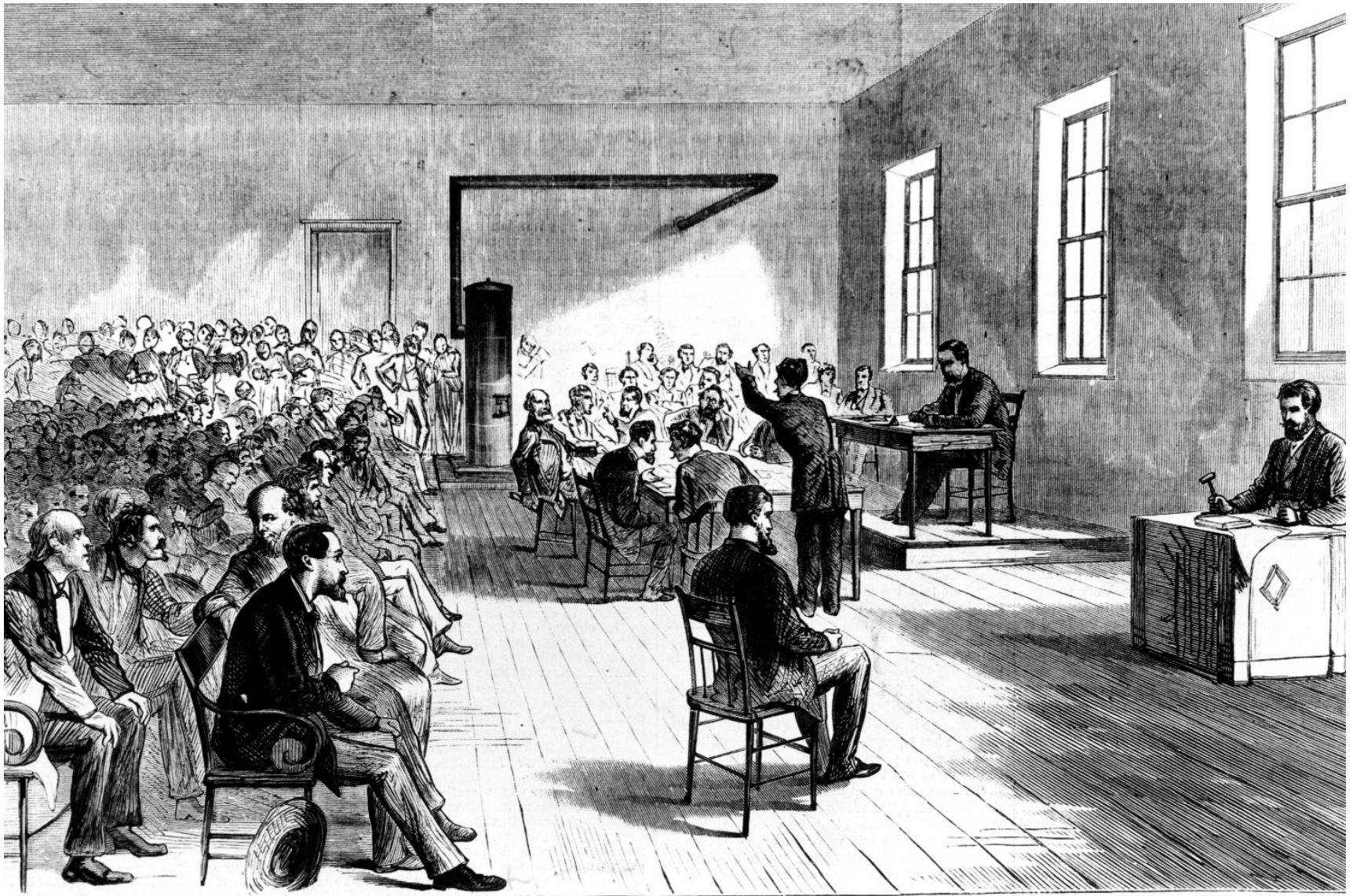


Utah State Courts

THE CHANGING FACE OF JURORS IN UTAH



THE MORMON TROUBLES—TRIAL OF THOMAS HAWKINS.

Thomas Hawkins Trial
circa 1871

When Utah became a state in 1896,
only men could serve on juries.

LAWS OF UTAH 1896

CHAPTER LII.

GRAND AND PETIT JURORS.

An Act to provide for drawing and summoning Grant and Petit Jurors.

Be it enacted by the Legislature of the State of Utah:

Section 1. It shall be the duty of the clerk and county assessor of each county of this State, as soon as this act shall become a law, and in the month of January of each year thereafter, to prepare a written list of as many names as the district judge or judges may direct, from which the grand and petit jurors shall be drawn to serve in the district court of such a county until a new list shall thereafter be made. Said clerk and county assessor shall alternately select from the list of tax payers of such county, **the name of a male citizen of the United States**, who has been a resident of the county for a period of six months next preceding, and who can read and write in the English language, and as selected, the name and residence of each shall be entered upon the list until the same shall contain the number of names ordered by the district judge or judges, when the same shall be duly certified by such clerk and county assessor, and shall be filed in the office of the clerk of the district court and a duplicate copy shall be made and certified by such officers and filed in the office of the sheriff.

Utah State Courts



Beaver County Courthouse
circa 1968

Just two years after Utah became a state,
women could serve on juries.

Utah Revised Statutes – 1898

Section 1297. Who competent as jurors. A person shall be competent to act as a juror:

1. Who is a citizen of the United States over the age of twenty-one years; and,
2. Who can read and write the English language; and,
3. Who resides in, and has resided in the county in which such person is called upon to serve, for six months next preceding the time such person is selected; provided, that the residence required to render a person competent to serve as a juror in a justice's court or on an inquest shall be in the city or precinct for six months next preceding the time actually called to serve; and,
4. Who is a taxpayer in the state; and,
5. Who is of a reputable sound mind and discretion, and who is not so disabled in body as to be unable to serve.

Section 1298. Who incompetent. A person shall not be competent to act as a juror:

1. Who does not possess the qualifications prescribed by the last preceding section.
2. Who has been convicted of malfeasance in office or any felony or other high crime.
3. Who is an offer or soldier of the United States, or a person subject to the military control thereof.

Section 1299. Who exempt. A person shall be exempt from liability to act as a juror who is:

1. A judicial or civil officer of the United States, or the state of Utah, or a military officer or soldier of the state in actual service.
2. A person holding a county, city, town or precinct office.
3. An attorney and counselor at law.
4. A person editing a newspaper or periodical.
5. A teacher in a university, college, academy or school.
6. A practicing physician or surgeon.
7. An officer, keeper, or attendant of an almshouse, hospital, asylum, or other charitable institution.
8. A person engaged in the performance of duty as officer or attendant of a county jail or of the state prison.
9. An express agent, mail carrier, telegraph or telephone employee, miller, or keeper of a public ferry or toll gate.
10. A dispensing druggist of a prescription drug store.
11. A superintendent, engineer, conductor, fireman or station agent of a railroad.
12. A person drawn as a juror in any court of record in this state, upon a regular panel, who has served as such within a year; but this exemption shall not extend to a person who is summoned as a juror for the trial of a particular case.
13. An active member of a regularly organized fire company of any city or town in this state.
14. **A female citizen.**

Utah State Courts

In 1900, the Utah Supreme Court ruled that race should not prohibit an individual from serving on a jury.

22 Utah 232, 61 P. 1004

Supreme Court of Utah.
McPHERSON
v.
McCARRICK.
July 9, 1900.

Syllabus by the Court.

- 1. Color is not a test of one’s right to render jury service, under section 1297, Rev. St. 1898.**
2. A written objection by a juror to serving on a jury with another certain juror, on account of the color of the latter, although frivolous, unwarranted, and unworthy, forms no basis for an action at law for damages, especially where the objection was not accompanied by either abusive language or assault or defamation of character.

Statement of Facts.

This is a suit for damages alleged to have been occasioned by acts of the defendant which prevented the plaintiff from serving upon a jury. It is alleged in the complaint, substantially, that the plaintiff is a colored man; that on February 26, 1900, he possessed all the qualifications requisite under the laws to serve as a juror in Salt Lake county; that on said day the district court in and for Salt Lake county ordered a special venire to be issued, requiring 10 persons to be summoned to serve as jurors in an action then pending entitled, "**The State of Utah v. John H. Benbrook;**" **that the plaintiff was summoned as one of said jurors, examined touching his qualification, accepted by both sides, and duly sworn to try the cause;** that after the jury had been sworn the defendant herein, "who had also been accepted and sworn as a juror in said action, willfully and maliciously, and with intent to injure and humiliate this plaintiff, and to prevent him from serving on said jury, prepared, or caused to be prepared, and signed, a written statement, directed to the court, refusing to serve as a juror unless the said plaintiff should be excluded therefrom, **basing his objections to serve as a juror with this plaintiff on the sole ground that this plaintiff is a colored man**"; that said writing or petition was presented to the court by this defendant, or by his direction and with his knowledge and consent, on or about the 27th of February, 1900; that "thereupon the attorneys for the respective parties, being, as plaintiff is informed and verily believes, afraid of jeopardizing the interests of their respective clients by resisting the said petition," with the consent of the court, excluded this plaintiff from further participation in the trial of said action, and caused him to be discharged from further attendance at said trial as a juror; that, had he been permitted to serve as a juror during said trial, he would have been entitled to receive as fees the sum of \$22; and that he was greatly humiliated and put to shame in the community in which he resides, and suffered greatly in mind, because of the open and public insult, and was damaged by reason thereof in the sum of \$5,000.

To this complaint defendant interposed a demurrer on the ground that no cause of action was stated. The demurrer was sustained, and, upon the plaintiff failing to amend, the case was dismissed. After a statement of the case, made as above, BARTCH, C. J., delivered the opinion of the court:

The sole question for determination on this appeal is whether the complaint states a cause of action, it being admitted that the court had jurisdiction of the cause. This question, upon careful examination of the allegations relied upon, must be answered in the negative. The fact that the respondent informed the court that he would not serve as a juror with the appellant, because he is a colored man, of itself gave rise to no cause of action, notwithstanding that under our statute a colored citizen, if otherwise qualified, has the same right to serve on a jury as a white citizen, and the same means of redress in the event of an infringement of that right. **Color is not a test of one’s right to render jury service. Section 1297, Rev. St.**

The black man, in this country, now enjoys full citizenship with the white man. All the rights and privileges incident to such citizenship attend him, the same as the white man. This is so by virtue of the constitution of the United States. The colored man, therefore, stands upon perfect equality with all others before the law.

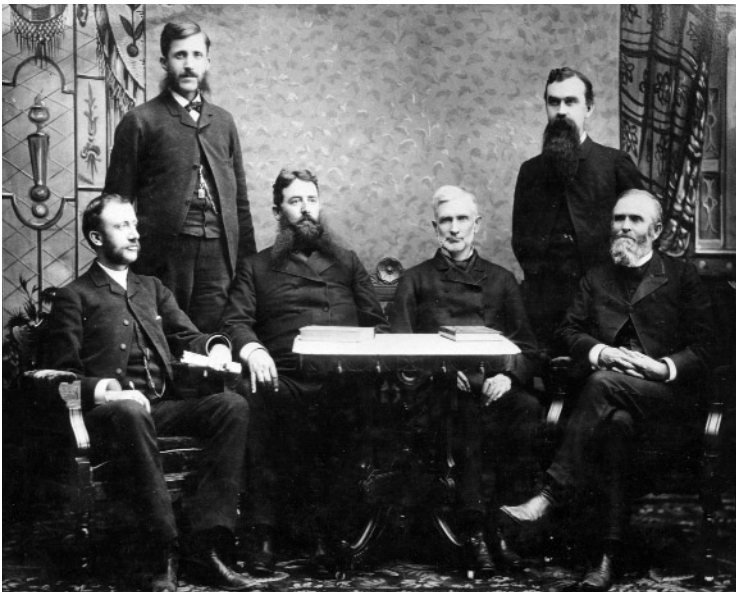
In accordance with the divine law, **the humane and enlightened judgment of our country has ordained that "all men are equal before the law."** Hence, while socially people may do as they choose, within the law, and may associate with some and exclude others, yet in matters public a white man is entitled to no rights or privileges which are denied a black man, and vice versa. That one person is colored differently from another is, in law, wholly immaterial. "Because," says Mr. Justice Morse in *Ferguson v. Gies*, 82 Mich. 358, 46 N. W. 718, 9 L. R. A. 589, "it was divinely ordered that the skin of one man should not be as white as that of another, furnishes no reason that he should have less rights and privileges under the law than if he had been born white, but cross-eyed, or otherwise deformed. The law, as I understand it, will never permit a color or misfortune that God has fastened upon a man from his birth to be punished by the law, unless the misfortune leads to some contagion or criminal act; nor, while he is sane and honest, can he have less privileges than his more fortunate brothers. The law is tender, rather than harsh, towards all infirmity; and, if to be born black is a misfortune, then the law should lessen, rather than increase, the burden of the black man’s life."

If, then, the appellant, who is a colored man, had been injured by any misdeed of the respondent, the law would afford him redress. The difficulty in this case, however, is that the complaint fails to show any language, act, or conduct on the part of the respondent which is actionable. There is nothing to show that he abused or assaulted the appellant or attempted to expel him from the jury, or even that he employed abusive language towards him in his presence, or asked for his discharge. Nor was there any defamation of character or any libelous accusation, so far as shown by the record. The writing referred to in the complaint, of itself, did not injure the appellant. If he suffered any damage, it was caused by the action of the attorneys and the court in discharging him from further participation in the trial as a juror. Whether, under the circumstances, such action was warranted, we are not called upon to decide. It is clear, however, that the respondent cannot be held responsible for it. **The sole charge, as to him, is that he objected, in writing, to serve on the jury with the appellant, because of his color.** While such objection was frivolous, unwarranted, and unworthy of one who had taken an oath to do his duty as a juror, still, under the circumstances as shown here, it was not such as to cause a pecuniary liability.

If, however, it be true, as seems to be indicated by the record, that the respondent sat quietly by, without objection, until all the jurors were examined and sworn to try the cause, and then for the first time made his objection, maliciously, and that such objection led to the discharge of himself and the appellant from the jury, the court, to maintain its own dignity, would have been justified in adjudging him guilty of contempt, and in imposing an adequate penalty therefore. **Such conduct and trifling ought not be permitted in a court of justice.** We are of the opinion that the demurrer to the complaint was properly sustained. The judgment is affirmed, with costs.

MINER and BASKIN, JJ., concur.

Utah 1900.



Utah Territorial
Officers
circa 1880s

Utah State Courts



Supreme Court,
Capitol Building
circa 1915

By 1933, only a sub-group of women could
be exempted from jury service.

REVISED STATUTES OF UTAH 1933

Exemption From Service

A person shall be exempt from jury service who is:

- (1) A judicial or civil officer of the United States, or of this state, or who is a member of the national guard;
- (2) A person holding a county, city, town or precinct office;
- (3) An attorney and counselor at law;
- (4) A person editing a newspaper or periodical;
- (5) A teacher in a university, college, academy or school;
- (6) A practicing physician or surgeon;
- (7) An officer, keeper or attendant of an almshouse, hospital, asylum or other charitable institution;
- (8) A person engaged in the performance of duty as officer or attendant of a county jail or of the state prison;
- (9) An express agent, mail carrier, telegraph or telephone employee, miller or keeper of a public ferry or toll gate;
- (10) A dispensing druggist of a prescription drug store;
- (12) A superintendent, engineer, conductor, fireman or station agent of a railroad;
- (13) A person drawn as a juror in any court of record in this state upon a regular panel;
- (14) An active member of a regularly organized fire company of any city or town; or,
- (15) **A female citizen who has the active care of minor children. (L.29, p. 157, s 3599.)**

Utah State Courts



Scott M. Matheson
Courthouse
Photo Credit:
Jerry Sintz

Current Utah statutes about jurors.

78-46-3. Discrimination prohibited.

A citizen shall not be excluded or exempt from jury service on account of race, color, religion, sex, national origin, age, occupation, disability, or economic status.

78-46-7. Persons competent to serve as jurors -- Persons not competent to serve as jurors.

- (1) A person is competent to serve as a juror if the person is:
 - (a) a citizen of the United States;
 - (b) 18 years of age or older;
 - (c) a resident of the county; and
 - (d) able to read, speak, and understand the English language.
- (2) A person who has been convicted of a felony that has not been expunged is not competent to serve as a juror.

Utah State Courts

Constitution of Utah

ARTICLE I DECLARATION OF RIGHTS

Section 1. [Inherent and inalienable rights.]

All men have the inherent and inalienable right to enjoy and defend their lives and liberties; to acquire, possess and protect property; to worship according to the dictates of their consciences; to assemble peaceably, protest against wrongs, and petition for redress of grievances; to communicate freely their thoughts and opinions, being responsible for the abuse of that right.

Section 2. [All political power inherent in the people.]

All political power is inherent in the people; and all free governments are founded on their authority for their equal protection and benefit, and they have the right to alter or reform their government as the public welfare may require.

Section 3. [Utah inseparable from the Union.]

The State of Utah is an inseparable part of the Federal Union and the Constitution of the United States is the supreme law of the land.

Section 4. [Religious liberty.]

The rights of conscience shall never be infringed. The State shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; no religious test shall be required as a qualification for any office of public trust or for any vote at any election; nor shall any person be incompetent as a witness or juror on account of religious belief or the absence thereof. There shall be no union of Church and State, **nor shall any church dominate the State or interfere with its functions.** No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or for the support of any ecclesiastical establishment.

Section 5. [Habeas corpus.]

The privilege of the writ of habeas corpus shall not be suspended, unless, in case of rebellion or invasion, the public safety requires it.

Section 6. [Right to bear arms.]

The individual right of the people to keep and bear arms for security and defense of self, family, others, property, or the state, as well as for other lawful purposes shall not be infringed; but nothing herein shall prevent the Legislature from defining the lawful use of arms.

Section 7. [Due process of law.]

No person shall be deprived of life, liberty or property, without due process of law.

Section 8. [Offenses bailable.]

(1) All persons charged with a crime shall be bailable except:

(a) persons charged with a capital offense when there is substantial evidence to support the charge; or

(b) persons charged with a felony while on probation or parole, or while free on bail awaiting trial on a previous felony charge, when there is substantial evidence to support the new felony charge;

or

(c) persons charged with any other crime, designated by statute as one for which bail may be denied, if there is substantial evidence to support the charge and the court finds by clear and convincing evidence that the person would constitute a substantial danger to any other person or to the community or is likely to flee the jurisdiction of the court if released on bail.

(2) Persons convicted of a crime are bailable pending appeal only as prescribed by law.

Section 9. [Excessive bail and fines -- Cruel punishments.]

Excessive bail shall not be required; excessive fines shall not be imposed; nor shall cruel and unusual punishments be inflicted. Persons arrested or imprisoned shall not be treated with unnecessary rigor.

Section 10. [Trial by jury.]

In capital cases the right of trial by jury shall remain inviolate. In capital cases the jury shall consist of twelve persons, and in all other felony cases, the jury shall consist of no fewer than eight persons. In other cases, the Legislature shall establish the number of jurors by statute, but in no event shall a jury consist of fewer than four persons. In criminal cases the verdict shall be unanimous. In civil cases three-fourths of the jurors may find a verdict. A jury in civil cases shall be waived unless demanded.

Section 11. [Courts open -- Redress of injuries.]

All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending before any tribunal in this State, by himself or counsel, any civil cause to which he is a party.

Section 12. [Rights of accused persons.]

In criminal prosecutions the accused shall have the right to appear and defend in person and by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to be confronted by the witnesses against him, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, and the right to appeal in all cases. In no instance shall any accused person, before final judgment, be compelled to advance money or fees to secure the rights herein guaranteed. The accused shall not be compelled to give evidence against himself; a wife shall not be compelled to testify against her husband, nor a husband against his wife, nor shall any person be twice put in jeopardy for the same offense.

Where the defendant is otherwise entitled to a preliminary examination, the function of that examination is limited to determining whether probable cause exists unless otherwise provided by statute. Nothing in this constitution shall preclude the use of reliable hearsay evidence as defined by statute or rule in whole or in part at any preliminary examination to determine probable cause or at any pretrial proceeding with respect to release of the defendant if appropriate discovery is allowed as defined by statute or rule.